whether any consequential relief is or could be claimed or not." But this power is purely discretionary, and the Court is not bound to make the declaration except in a proper case. *Re Clay*[8] is authority for saying that a declaration will not be made for a mere legal right without consequential relief. Duke, L.J. at page 79 draws attention "to the grave prospect there is if any citizen who possibly supposes he may have litigation at some future time against him is to be entitled to safeguard himself and set this affairs right by making his supposititious antagonist the defendant to an action." I am satisfied that in the present case no such possible future litigation was in the mind of the plaintiff and that it never occurred to him to institute proceedings, either in 1917 or at any time until a breach was committed. His attitude is shewn by the following passage from his evidence :—

"I never, before P. Hameed's death, asked him to put anything in writing declaring the trust. There was no necessity, because I am the head of the family and every member of the family knew that I had used his name."

I believe that passage accurately represents the position as it was understood by all concerned, and that never at any time prior to 1946 would any member of the family have suggested that the premises and business did not belong to the plaintiff. That being so, I can see no reason for instituting proceedings in order to obtain a declaration of a trust which had never been challenged, and I hold that the period of limitation runs from the date when the plaintiff's position was first challenged by an act committed in breach of trust. This act having been committed less than six years ago, the suit is not statute barred.

There remains to consider two further points which the defendants have raised. Firstly it is said that the suit is barred by laches because the plaintiff has delayed instituting proceedings until after P. Hameed's death, so that the evidence which P. Hameed might have given is not now available. But in order to substantiate the defence of laches some neglect on the part of the plaintiff must be shewn. I can see none here, and no neglect was suggested. Secondly, I am told that if I make the order asked for I shall be making an unenforceable order. I confess to some difficutly in understanding what is meant by that. My order will declare that the rights under the tenancy agreement are held by the defendants in trust for the plaintiff. The Singapore Harbour Board may, if they think fit, take steps to terminate the tenancy. They may, if they think fit, make a new tenancy agreement in the plaintiff's name. But so long as this tenancy agreement lasts the defendants will hold the tenancy in trust for the plaintiff and in their capacity as trustees can enforce the rights which the tenancy agreement accords.

There must be judgment for the plaintiff for the declaration asked for in items (a) and (c) of para. 15 of the Statement of Claim and I order that accounts be taken as asked for in items (d) and (e). No order for damages. The plaintiff to have the costs of the action.

Judgment for the plaintiff.

In re SHAIK RAMZAN BIN ABDULLAH BASARAWI, DECEASED.

[Orig. Civ. Juris. (Murray-Aynsley, C.J.) March 22, 1951]

[Singapore — Originating Summons No. 272 of 1950]

Trustees — Trustees appointed by consent of beneficiaries by Japanese Court — Order of Appointment set aside — Trustees remuneration for services rendered and expenses incurred — Japanese Judgment and Civil Proceedings Ordinance, 1946.

During the Japanese occupation the Estate & Trust Agencies (1927), Limited was by the consent of all the beneficiaries appointed by the Order of the Japanese Court sole trustees of the estate of the deceased in place of the defendant who was serving a prison sentence. This Japanese Order was subsequently set aside in 1950 by virtue of section 3 of the Japanese Judgments and Civil Proceedings Ordinance 1946. The Company had managed and administered the affairs of the estate up to the date when the Japanese Order was set aside.

The question arose as to whether the Company was entitled to any remuneration for the services rendered to the estate of the deceased prior to the setting aside of the Japanese Order.

Held, that because the beneficiaries of the estate have benefited from the work done by the Company, this created an obligation to pay a reasonable remuneration for the services rendered and they be indemnified against expenses incurred by them.

Observations regarding validity of Japanese Judgments.

ORIGINATING SUMMONS.

N. L. Macassey for the defendant.

Eric Choa for The Estate & Trust Agencies (1927) Ltd.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Murray-Aynsley, C.J. : —In the course of the proceedings resulting from this Summons it became necessary to consider the position of the applicants, the Estate and Trust Agencies (1927), Ltd. They were appointed trustees by a decree of the Japanese Court that functioned in the city during the occupation period. The previous trustee had been convicted and sentenced by a Japanese Criminal Court. His removal

was the consequence of that conviction. He was at the time of the decree incapacitated from performing the duties of a trustee by the fact that he was in prison. Ultimately there was an application for the substitution under section 5 of Ordinance No. 37 of 1946 and also an application under section 3 to set it aside. It was set aside for reasons which have nothing to do with the applicants and in consequence no order was made on the application under section 5. The result of this is that it is now necessary to consider, in the first instance, whether the applicants can claim anything under the Japanese decree, and, if not, can they claim otherwise?

At the outside I may mention that the applicants looked after the trust property until the decree was set aside in 1950 and they performed valuable services which ought to be remunerated. Until 1950 no one made any objection. The only difficulty is to find an adequate legal ground for awarding them something.

I cannot see any ground for treating the Japanese decree as a judgment. By statute certain Courts were set up for the Straits Settlements and these statutes remained in force during the occupation period. The Japanese Courts did not comply with the statutory requirements. There could not by statute be any other Courts in the territory comprised wihin the Straits Settlements. Therefore there could be no judgments. Nor could a judgment of a purported Court in the territory be a foreign judgment.

Unless an order were to be made under section 5, a Japanese judgment would be without legal consequences. I do not think that International Law has any application. If there is any rule on the subject it would, in all cases, be subject to any relevant statutes. In any event International Law has states for its subjects, not individuals, and as such it has no application in matters affecting the rights of individuals *inter se*. To suggest that International Law has any application involves acceptance of the proposition that the Government of the Colony was under an obligation to the Japanese Government to recognize the validity of Japanese acts during the period of the occupation. When territory of a state has been occupied by an enemy and liberated, the extent to which acts of the occupying power shall be recognized is a domestic matter for such state. It is true that in certain matters the law laid down by Courts has its origin historically in the opinions of writers on International Law but the law so laid down is English law, not International Law. The opinions of such writers have no relevance or significance until their opinions are accepted and applied by the Courts. And, of course, the Courts have no power to give any ruling that conflicts with the statute law. I think, therefore, that the applicants can claim nothing under the Japanese decree. I think that section 7 is really redundant. But in any event I do not think that the words "or otherwise" should be read as *ejusdem generis* with "set-off or counter-claim". I think that that section would bar the claim of the applicants if it were not barred on more general grounds.

I should add that a judgment may be valid as a contract, though not as a judgment. This may be the case in some instances with Japanese judgments. It cannot be applied to the present case, as the trustee could not oppose the decree of the Japanese Civil Court except on the supposition that the conviction before the Japanese Criminal Court was wrong. This he could not allege.

It would be manifestly inequitable if the applicants were to get nothing for their labours and expenditure. Usually when Courts find themselves in the position in which I now am, get out of the difficulty by one or other of two expedients: they discover some kind of a trust, or some kind of what they call an implied contract. The zeal they displayed to do justice has led to such frequent use of these expedients that English Law has no rational theory of obligations. On the other hand, English Law failed to develop quasi-contract which is a more rational method of dealing with the problem. There is no question here of a trust and I think it would be a perversion of facts to find that there is any obligation to pay the applicants resultings from agreement. But it would be wrong to treat the assumption of their duties by the applicants as unlawful. Until 1950 no objection was taken to the applicants continuing to act. I think that in these unusual circumstances the law should be capable of adapting itself to do justice, and I consider that the benefit derived by the beneficiaries from the activities of the applicants created an obligation to give a reasonable remuneration for the services rendered and to indemnify them for expenses incurred. In the absence of agreement the matter must be referred to the Registrar to quantify. Cost of all parties, solicitor and client, out of estate.

Order acordingly.

JONES v. CHURME AND MOREIRA.

[Orig. Civ. Juris. (Taylor, J.) May 24, 1951]

[Selangor — Divorce No. 5 of 1950]

Divorce — Evidence in divorce — Application of English law — Evidence of spouse as to non-access.

In divorce proceedings admissibility of evidence bearing directly on the relief claimed is governed by the law of England and the operation of the Evidence Ordinance is, to that extent, modified.

A spouse may not give evidence of non-intercourse during the marriage to bastardise a child born in wedlock.

Russell v. **Russell**,(1) applied.

Case referred to :—

(1) *Russell v. Russell* (1924) A.C. 687.

PETITION FOR DIVORCE.

K. L. Devaser for the petitioner.

Respondent and Co-respondent in person.

Cur. Adv. Vult.

Taylor, J. : — This was a petition by a husband for dissolution of marriage on the ground of adultery between the wife and the co-respondent. It was proposed to prove the adultery by proving that the wife had borne a child at a period when the husband had no access to her. Counsel sought to question the petitioner with a view to shewing non-access by his own evidence. The Court stopped the question and called upon Counsel to shew that such evidence is admissible in this country and, at the request of Counsel, granted an adjournment to enable him to consider the matter. On the resumption, Counsel said that he could find no authority either way and did not wish to argue the point. He formally tendered the evidence and said that if the Court ruled it inadmissible he would drop the matter and seek to prove the adultery by other means.

The Divorce Enactment (Cap. 9) provides that "the Court shall act and give relief on the same principles as apply in England." If the law of evidence were materially different it might easily happen that the substantive relief sought could not be given because the necessary facts could not be proved. I am therefore, of opinion that the rule in *Russell v. Russell*(1) applies in the Federation.

I do not mean to say that the Evidence Ordinance is excluded so that all questions of admissibility arising in a divorce suit must be decided by the English law. On the contrary, I think that the Evidence Ordinance is generally applicable and that where it is required to prove a fact, such as a birth of a marriage, which might be equally material in other types of action, the evidence of such a fact must be regulated by the Evidence Ordinance. But where, as here, the fact to be proved bears directly on the basis of the divorce proceedings the admissibility of the evidence of that fact must be decided according to English law and the Evidence Ordinance is, to that extent, modified.

I would add, though my judgment is in no way dependent on this further consideration, that the reasons for the rule in the *Russell* case, as explained by Lord Dunedin at pp. 722, 725, *et seq*, apply even more strongly in this country, where many of the parties appear in person, than in England. Such evidence, and the cross-examination on it, if admitted, would very soon make it necessary to adopt the rule, either by practice or by legislation if (contrary to my view) it is not already applicable.

Order accordingly.

The Rule in *Russell v. Russell* is no longer law of England. It was abolished by section 7 of the Law Reform (Miscellaneous Provisions) Act, 1949 which was subsequently incorporated in the Matrimonial Causes Act, 1950. (Ed. M.L.J.).

BATES v. BATES.

[Orig. Civ. Juris. (Taylor, J.) May 26, 1951]

[Selangor — Divorce Suit No. 4 of 1950]

Divorce — Evidence of change of domicil.

An immigrant husband was said to have expressed an intention to settle in Malaya. **Held** that these words did not shew an intention to settle in the State in which he then resided. **Hickson** v. **Hickson**,(1) discussed and held not to be an authority.

Cases referred to :—

(1) *Hickson v. Hickson* (1934) F.M.S.L.R. 318, (1935) F.M.S.L.R. 140; (1935) M.L.J. 265 (C.A.).

(2) *Winans v. Attorney-General* (1904) A.C. 291.

PETITION FOR DIVORCE.

K. K. Benjamin for the petitioner.

Respondent in person.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : — This is a wife's petition for dissolution of her marriage which took place in Seremban about three years ago; both parties were then in their early twenties; the husband was a non-commissioned officer in the army, stationed in Negri Sembilan and admittedly domiciled in England at that time; the bride was a locally-born girl, originally domiciled in Malacca. Some months later the husband was demobilised; he elected to take his discharge locally instead of returning to England and he obtained employment